1950.

File No. Prohibition II 50(A)

Legal Deptt.
B BRANCH

Subject:— Rules under the Bombay Prohibition Act, 1949

(for previous ppr. pl. see pt. I, II & III)

P.T.O.

File No. Prohibition II/50(R)
Pt IV

Gen. 196

264-B

Legal Department.

The Bombay Denatured Spirit Rules which have been sent to the Remembrancer of Legal Affairs for scrutiny were drafted before the High Court Judgment in what is known as the Prohibition test case was pronounced. Some of the provisions similar to the provisions contained in the said rules have been examined in the High Court judgment and as regards some, the High Court judgment has held them to be ultra vires. The Rules have, therefore been examined in the light of the High Court judgment and the following observations are made thereon:

2. It is held in the High Court judgment in the Prohibition test case that possession, use or consumption of non-beverages and medicinal and toilet preparations cannot be prohibited under the Bombay Prohibition Act, 1949, It is also held by the High Court that denatured alcohol although intoxicating is not a beverage. All these provisions are held to be void as offending against the provisions of article 19(1)(f) of the Constitution. What the High Court has held is that Government has got powers to prohibit the use of non-beverage for noxious purposes only. It is further held by the High Court that it would clearly be a violation of the right of freedom and speech and expression to prevent person from advocating something which is lawful even though it may have the effect of frustrating or defeating the provisions of the Statute.

3. In view of these observations of the High Court provisions referred to below are ultra vires and have to be delected from the Rules.

4. The manufacture of denatured spirit has been provided for in the Spirit Denaturing Regulations, 1950, the draft of which has been supplied to the Revenue Department under L.D.U.R.No.14645 dated 19th October 1950. The object

of ....

of the present rules is to provide for the import, export, transport, sale, purchase, use, possesssion and consumption of denatured spirit. "Denatured" has been defined in section 2(10) of the Act to mean subjected to a process described for the purpose of rendering unfit for human consumption. Denatured spirit is not a beverage. In fact it is stated in the draft rule 34 on p. 55 ante that all bottles, jars etc. containing ordinary denatured spirit shall bear a label on the 4 sides of the resceptacle containing the word 'poison'. According to the High Court judgment, danatured spirit being a non-beverage, its possession, use and consumption cannot be controlled under the Bombay Prohibition Act. The whole set of rules, in so far as they regulate and control possesssion, use or consumption of denatured a spirit will have to be deleted from the said rules. All other reference controlling or regulating the use of any kind of denatured spirit will have to be deleted from the rules. Similarly the provision requiring premits for domestic purposes (rule 19), permits for registered medical practitioners (rule 20), permits for medical, scientific and educational purposes (rule 21), permits for the purposes of art, industry or profession (rule 22) and other provisions depeding thereon will have to be deleted from the said rules. The provisions contained in clause (vii) of rule 22(5) regulating the manner in which polishes, garnishes, colours and dyes shall be prepared from the denatured spirit will not be covered by the provisions of theAct for the reasons given in the L.D.U.R.No. 473 dated the 11th January 1950. Similarly the form of licence or permit for the possession and use of any kind of denatured spriti will have to be deleted from the said rules. As provision relating to undertaking that a license or permit holder shall not do anything which will have the effect of frustrating or defeating the provisions of the Act has been held to be ultra vires. the said condition

however appearing in the rule or in the form of licence or permit will have to be deleted.

5. Rule 6 of the Revenue Department draft is unnecessary and may be omitted.

6. Rule 13(ii) of the Revenue Department draft provides for levy of duty at Rs. ~~x~~ per proof gallon on loss of sprit. These rules do not provide for levy of duty on spirit. The main intention appers to be that the licensee shall be liable to pay duty for loss of spirit if such loss is not satisfactorily explained. Rule 13(ii) should be amended accordingly.

Rule 13(viii) of the Revenue Department draft in so far as it provides for the manner of maintaining account and submission of returns is not in order as the power to prescribe the accounts and the returns vests in the Director. The said provision should therefore be omitted. Similar provisions in other rules should also be likewise omitted.

7. Rules 14, 17, 25 of the Revenue Department draft are not necessary and may be omitted.

Sub-rule (5)

8. ~~Rule xxxxxx~~, of rule 22 of the Revenue Department draft lays down special conditions with reference to the permit in Form D.S.V. Under clause (v) of that Sub-rule, the licensee is required to preserve certain documents for a period of one year after the expiry of the permit. The insertion of this provision will not serve any useful purpose because it will not be feasible to enforce the condition after the expiry of the permit. The said provision should therefore be deleted.

9. Rule 31 of the Revenue Department empowers the Collector, with the permission of the Commissioner, to permit any wholesale licensee to sell methylated or special industrial denatured spirit by making an endorsement to that effect on the licence. This provision may be inserted as a separate rule.

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10. Rule 55 of the Revenue Department draft prohibits transport of ordinary denatured spirit from land custom station etc. except under an import or transport pass and on payment of fee. It is understood from the Directors office that the rule has been inserted with a view to providing for payment of pass (vend) fee (vide rule 55(2)). The provisions for payment of fee may be made in rules 45 and 49 relating to transport and import rules and rules 55 and 56 may be omitted from the draft.

11. Form D.S.I . Condition 14 of the Revenue Department draft provides that the licensee shall when ordered by Government sell denatured spirit to Government or to any person mentioned in the order at such price as may be specified in the Order. The provision is outside the scope of Section 143 of the Act and may be omitted from the draft.

12. Forms D.S.VI and VII.- The last condition in both these forms of the Revenue Department draft provide for handing over stock of denatured spirit to the Collector on the cancellation etc. of the permit without claiming any compensation. It is not legally feasible to provide under the Act that no compensation shall be paid for the stock handed over. (cf. para 7 of L.D. memo. No. 4252 dated 28.3.50).

13. The Revenue Department is, therefore, requested to examine the rules in the light of the above observations and forward a fesh set of fules if necessary for the scrutiny of this Department.

Id/- J.R.D.
22/11

Additional Secretary to Government.

U.R. to R.D. No. 16481,

dated the 23rd November 1950.